

UNITED STATES DISTRICT COURT FILED
DISTRICT OF MASSACHUSETTS CLERKS OFFICE

SANDY J. BATTISTA,
Plaintiff,

vs.

DUANE MACEACHERN, et al.,
Defendant's.

2004 JUN 10 A 11:54

U.S. DISTRICT COURT
DISTRICT OF MASS.
NO.04-10779-DPW.

PLAINTIFF'S MOTION TO WAIVE DOCKETING FEE AND TO BE
ALLOWED TO PROCEED ON APPEAL IN FORMA PAUPERIS

Plaintiff, Sandy J. Battista, acting pro-se in the above entitled matter, respectfully requests that this Court waive the docketing fee and allow her to proceed upon appeal in forma pauperis. As grounds thereto, plaintiff states the following:

- 1) That plaintiff has been in the Department of Correction since December of 1982, and is currently civilly committed under G.L. Ch.123A, §14(d), as amended St.1999, c.74.
- 2) That the fee paying requirement under the PLRA pertains only to "prisoners," as that term is legally defined, not those persons, like the plaintiff, who are currently "civilly" committed. See Perkins vs. Hedricks, 340 F.3d 582, 583 (8th Cir. 2003); Troville vs. Venz, 303 F.3d 1256, 1259-60 (11th Cir. 2002); Yoder vs. Patla, 234 F.3d 1275 (7th Cir. 2000); Page vs. Torrey, 201 F.3d 1136, 1139-40 (9th Cir. 2000); see King vs. Greenblatt, 53 F.Supp.2d 117, 13738 (D.Mass. 1999).
- 3) Having been in custody for the last 20+ years, plaintiff has no real estate, stocks, bonds, notes, automobiles, etc., except for a small inheritance for her fathers 2001 passing. (Approximately \$850.00).

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4) Plaintiff is currently employed at the facility in which she is confined, at the rate of \$1.00 a day x 7, and receives no other source of income from either family or friends.

5) Plaintiff must, according to institutional policy, provide for [all] her weekly/monthly personal/legal necessities,^{1/} and despite only making \$7.00 each week is charged full street prices for all items.

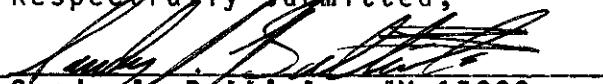
6) That plaintiff has as of date filed notices of appeals in four other non-related actions, ^{2/} which would have a total docketing fee of \$1,275.00. Which in turn would leave plaintiff no alternative but to pick and choose what action she wishes to appeal and which to abandon due to a lack of available funds.

7) Plaintiff further attaches her Application to Proceed Without Prepayment of Fees and Affidavit in support hereto.

WHEREFORE, it is respectfully prayed that this Court ALLOWS this motion and it's Order issue.

Dated: 6/7/04.

Respectfully submitted,


Sandy J. Battista, #M-15930
Plaintiff/Pro-se
Mass. Treatment Center
30 Administration Rd.
Bridgewater, Mass. 02324

[1] See Affidavit of the Plaintiff, Sandy J. Battista, #M-15930 in support of her Motion to Waive Filing Fees and to be Allowed to Proceed in Forma Pauperis, which is hereby incorporated by reference. (On file).

[2] See Sandy J. Battista vs. Maryanne Percuoco, et al., U.S.Dist.CT. C.A.No.04-10890-MEL; Sandy J. Battista vs. Robert Murphy, et al., U.S.Dist.Ct.C.A.No.04-10226-MEL; Sandy J. Battista vs. Robert Murphy, et al., U.S.Dist.Ct.C.A.No.03-12643-MEL; and Sandy J. Battista vs. Commonwealth, U.S.Dist.Ct.C.A.No.04-10378-RGS.

UNITED STATES DISTRICT COURT

District of Massachusetts

SANDY J. BATTISTA

Plaintiff

v.

DUANE MACEACHERN, et al.,

Defendant

APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF
FEES AND AFFIDAVIT

CASE NUMBER: 04-10779-DPW.

I, Sandy J. Battista

declare that I am the (check appropriate box)

 petitioner/plaintiff/movant other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? Yes No (If "No," go to Part 2)

If "Yes," state the place of your incarceration Mass. Treatment Center

Are you employed at the institution? Yes Do you receive any payment from the Yes

Attach a ledger sheet from the institution(s) of your incarceration showing at least the past six months' transactions. On file.

2. Are you currently employed? Yes No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 twelve months have you received any money from any of the following sources?

| | | |
|---|------------------------------|--|
| a. Business, profession or other self-employment | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| b. Rent payments, interest or dividends | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| c. Pensions, annuities or life insurance payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| d. Disability or workers compensation payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| e. Gifts or inheritances | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| f. Any other sources | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

4. Do you have **any** cash or checking or savings accounts? Yes No

If "Yes," state the total amount. Approximately \$850.00.

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value? Yes No

If "Yes," describe the property and state its value.

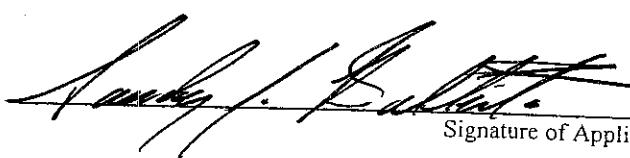
6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

Myself

I declare under penalty of perjury that the above information is true and correct.

6/7/04.

Date


Signature of Applicant

NOTICE TO PRISONER: A Prisoner seeking to proceed IFP shall submit an affidavit stating all assets. In addition, a prisoner must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.